

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs May 6, 2014

STATE OF TENNESSEE v. LADARION PEARSON

**Appeal from the Circuit Court for Madison County
No. 13-99, 13-100 Honorable Donald H. Allen, Judge**

No. W2013-01964-CCA-R3-CD - Filed July 11, 2014

The Defendant, Ladarion Pearson, entered guilty pleas to one count of aggravated criminal trespassing, two counts of assault, one count of aggravated burglary, and one count of robbery. He received an effective sentence of five years to be served in the Department of Correction. On appeal, the Defendant contends that the trial court erred in denying his request for alternative sentencing. Upon review, we affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Circuit Court Affirmed

CAMILLE R. MCMULLEN, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and ALAN E. GLENN, J., joined.

Gregory D. Gookin, Jackson, Tennessee, for the Defendant-Appellant, Ladarion Pearson.

Robert E. Cooper, Jr., Attorney General and Reporter; Ahmed A. Safeeullah, Assistant Attorney General; James G. Woodall, District Attorney General; and Brian Gilliam, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

On June 24, 2013, the Defendant entered guilty pleas to one count of aggravated criminal trespassing and two counts of assault in Case No. 13-99. In Case No. 13-100, he entered guilty pleas to one count of aggravated burglary and one count of robbery. At the guilty plea hearing, the State summarized the underlying facts of the Defendant's convictions as follows:

Case No. 13-99:

[O]n September [29, 2012], the Hornes[] . . . were across the street [from their house] when they noticed four black males walking around their residence. According to the Hornes, one appeared to be looking in the windows and this caused the Hornes to be concerned about what was going on on their property. They went across the street and approached all four [of the men]. One of [the men] had stated that their vehicle had broken down and needed a jump. At some point then there was a confrontation between the two Hornes . . . and the four men who were in that car described as a black hatchback. It was later identified as a black Nissan Versa. They got into a confrontation in which Ms. Horne was punched in the face. She reported that she was attacked by all four of the black males that were on the property and also Mr. Larry Horne had indicated that he was taken to the ground and that he was beaten by the four black males that were on that property.

They later left the scene. The sheriff's department was called. Later that same vehicle [],[,] based on the description and identification provided by the Hornes[,] was found at a Sonic[.] Deputies made contact with the four black males[.] They were later identified by the [Hornes] as the four people who were on their property and who assaulted them[.]

Case No. 13-100:

Chronologically, this case actually happened first. Before the defendants went to the Horne house . . . there was an incident at Mr. Staggs' house. . . . [When Mr. Staggs] arrived home at his residence[,] he saw . . . three or four black males running out of his home. . . . [H]e approached them and asked what was going on and . . . at that point one of them, and he wasn't sure which one, but one of them had punched him and as he went to the ground, . . . he was hit or kicked two or three more times at least by the other individuals. . . . [H]e fell to the ground and . . . the only thing he noticed missing was a set of keys that he had in his pants pocket.

Mr. Staggs [said the black males were driving] in a black vehicle, a small SUV type vehicle. . . . [This vehicle] was later found at that Sonic. When sheriff's deputies made contact with the four individuals, [including the Defendant], in that vehicle[, the sheriff's deputies] found a set of keys . . . [.] Later that set of keys was given to Mr. Staggs and he was able to identify that

as the set of keys that was taken from him during the attack that had happened earlier in the evening[.]

So the aggravated burglary is the entry into the home by these four defendants. Nothing was reported stolen or taken from the home, so they aren't charged with theft. . . . [T]he robbery is the taking of the keys from his person by the use of violence or force[,] in this case punching and kicking him and then removing those keys.

At the July 29, 2013 sentencing hearing, the State introduced the Defendant's presentence report, which indicated that at the time of the instant offenses, the Defendant was on probation for domestic assault, criminal trespass, and vandalism. The report also included victim impact statements on behalf of each of the three victims.

Sandra Pearson, the Defendant's grandmother, testified that the Defendant previously lived with her in Humbolt, Tennessee, and that she and her husband helped raise the Defendant. She stated that the Defendant "wasn't raised like he has been charged" and added that he "was in church every Sunday [and h]e knows the Bible up and down." She stated that he has "never been in any kind of trouble . . . like this." The Defendant did not pursue additional education after he finished high school and, according to Ms. Pearson, had problems in school due to a learning disability. Ms. Pearson testified that if the Defendant were granted probation, he would be able to live with her.

Following the hearing, the court sentenced the Defendant to 11 months and 29 days for each of his convictions in Case No. 13-99, and to five years for each of his convictions in Case No. 13-100. The court ordered that all sentences be served concurrently for an effective sentence of five years, the manner of service still to be determined.

The court then made detailed oral findings regarding the Defendant's suitability for probation or alternative sentencing. The court emphasized the circumstances of the offenses, noting this is a "very, very serious matter . . . [T]hree victims [] basically were all beaten, assaulted . . . [o]ne of which, Mr. Staggs, . . . was 70 years of age at the time[.]" Additionally, the court found several enhancement factors relevant, including the Defendant's criminal history; his role as a leader in the commission of the offenses; the fact that one of the victims was particularly vulnerable due to his advanced age and that the Defendant allowed this victim to be treated in an exceptionally cruel manner; and the Defendant's failure to comply with the conditions of a sentence involving release into the community. As mitigating factors, the court considered the Defendant's "relatively young" age and the fact that he accepted responsibility in this case.

The court also reviewed the Defendant's presentence report and the Defendant's lengthy criminal history. The court noted that the Defendant had a number of "relatively minor" traffic related offenses, including leaving the scene of an accident, driving while unlicensed, and violation of the Tennessee Financial Responsibility Law. Additionally, he was convicted of several more serious offenses, including aggravated criminal trespass and vandalism. He was placed on supervised probation for these offenses, during which he committed another offense of simple assault. He was again placed on probation, during which he committed the instant offenses.

The court denied the Defendant's request for alternative sentencing and probation and summarized its ruling as follows:

Now, in this case the Court finds that as far as whether or not [the Defendant] would be an appropriate candidate for probation or any other alternative sentencing, the Court has considered the presentence report[,] which I've talked about.

I've considered his physical and mental condition [of the Defendant]. Apparently there's nothing physically or mentally wrong with [the Defendant] according to his report.

Now, I also consider the facts and circumstances of this offense[,] which I've talked about.

I've considered his prior criminal history. Certainly that gives the Court some idea about whether or not he would be a good candidate for probation and in this particular case, the Court finds that his potential for rehabilitation is poor. It appears to this Court that he reasonably would not abide by the terms of probation. The reason I say that is because he's had probation twice and he's not completed probation on either occasion.

The Court finds that measures less restrictive than confinement have frequently and recently been applied to [the Defendant] without success.

The Court also finds that in this case that any type of probation would unduly depreciate the seriousness of these offenses.

For those various reasons, the Court finds that he is not an appropriate candidate for alternative sentencing. . . . [or] probation.

The trial court entered the judgment orders on August 6, 2013, and the Defendant timely appealed.

ANALYSIS

On appeal, the Defendant challenges the trial court's denial of probation or other form of alternative sentencing. He emphasizes his acceptance of responsibility in the instant offenses and maintains that supervised probation would fulfill the goals of sentencing while appreciating the seriousness of his criminal conduct. The State responds that the trial court properly exercised its discretion in sentencing the Defendant. We agree with the State.

Pursuant to the 2005 amendments to the sentencing act, a trial court must consider the following when determining a defendant's specific sentence and the appropriate combination of sentencing alternatives:

- (1) The evidence, if any, received at the trial and the sentencing hearing;
- (2) The presentence report;
- (3) The principles of sentencing and arguments as to sentencing alternatives;
- (4) The nature and characteristics of the criminal conduct involved;
- (5) Evidence and information offered by the parties on the mitigating and enhancement factors set out in §§ 40-35-113 and 40-35-114;
- (6) Any statistical information provided by the administrative office of the courts as to sentencing practices for similar offenses in Tennessee; and
- (7) Any statement the defendant wishes to make in the defendant's own behalf about sentencing.

T.C.A. § 40-35-210(b) (1)-(7) (2010). The defendant has the burden of showing the impropriety of the sentence on appeal. Id. § 40-35-401(d), Sentencing Comm'n Cmts. In determining the proper sentence, the trial court must consider the defendant's potential for rehabilitation or treatment. Id. §§ 40-35-102, -103 (2010). In addition, the court must impose a sentence "no greater than that deserved for the offense committed" and "the least severe measure necessary to achieve the purposes for which the sentence is imposed." Id. §§ 40-35-103(2), (4) (2010).

Because of the broad discretion given to trial courts by the 2005 amendments to the sentencing act, "sentences should be upheld so long as the statutory purposes and principles, along with any applicable enhancement and mitigating factors, have been properly addressed." State v. Bise, 380 S.W.3d 682, 706 (Tenn. 2012). Therefore, this court reviews a trial court's sentencing determinations under "an abuse of discretion standard of review, granting a presumption of reasonableness to within-range sentencing decisions that reflect

a proper application of the purposes and principles of our Sentencing Act.” Id. at 707. In addition, this standard of review applies to a trial court’s decision regarding “probation or any other alternative sentence.” State v. Caudle, 388 S.W.3d 273, 278-79 (Tenn. 2012).

Any sentence that does not involve complete confinement is an alternative sentence. See generally State v. Fields, 40 S.W.3d 435 (Tenn. 2001). Tennessee Code Annotated section 40-35-102(6)(A) (2010) states that a defendant who does not require confinement under subsection (5) and “who is an especially mitigated or standard offender convicted of a Class C, D or E felony, should be considered as a favorable candidate for alternative sentencing options in the absence of evidence to the contrary[.]” However, a trial court “shall consider, but is not bound by, the advisory sentencing guideline” in section 40-35-102(6)(A). T.C.A. § 40-35-102(6)(D) (2010). A trial court should consider the following when determining whether there is “evidence to the contrary” indicating that an individual should not receive alternative sentencing:

(A) Confinement is necessary to protect society by restraining a defendant who has a long history of criminal conduct;

(B) Confinement is necessary to avoid depreciating the seriousness of the offense or confinement is particularly suited to provide an effective deterrence to others likely to commit similar offenses; or

(C) Measures less restrictive than confinement have frequently or recently been applied unsuccessfully to the defendant[.]

Id. § 40-35-103(1)(A)-(C) (2010); see State v. Ashby, 823 S.W.2d 166, 169 (Tenn. 1991). The defendant has the burden of establishing suitability for full probation, even if the defendant is considered a favorable candidate for alternative sentencing. See State v. Boggs, 932 S.W.2d 467, 477 (Tenn. Crim. App. 1996) (citing T.C.A. § 40-35-303(b)).

A defendant is eligible for probation if the actual sentence imposed upon the defendant is ten years or less and the offense for which the defendant is sentenced is not specifically excluded by statute. T.C.A. § 40-35-303(a) (2010). The trial court shall automatically consider probation as a sentencing alternative for eligible defendants; however, the defendant bears the burden of proving his or her suitability for probation. Id. § 40-35-303(b) (2010). In addition, “the defendant is not automatically entitled to probation as a matter of law.” Id. § 40-35-303(b) (2010), Sentencing Comm’n Cmts. Rather, the defendant must demonstrate that probation would serve “the ends of justice and the best interests of both the public and the defendant.” State v. Souder, 105 S.W.3d 602, 607 (Tenn. Crim. App. 2002) (citations omitted).

When considering probation, the trial court should consider the nature and circumstances of the offense, the defendant's criminal record, the defendant's background and social history, the defendant's present condition, including physical and mental condition, the deterrent effect on the defendant, and the best interests of the defendant and the public. See State v. Kendrick, 10 S.W.3d 650, 656 (Tenn. Crim. App. 1999) (citing State v. Grear, 568 S.W.2d 285, 286 (Tenn. 1978)). In addition, "[t]he potential or lack of potential for the rehabilitation or treatment of the defendant should be considered in determining the sentence alternative or length of a term to be imposed[,]" and "[t]he length of a term of probation may reflect the length of a treatment or rehabilitation program in which participation is a condition of the sentence[.]" Id. § 40-35-103(5). Moreover, our supreme court has held that truthfulness is a factor which the court may consider in deciding whether to grant or deny probation. State v. Bunch, 646 S.W.2d 158, 160 (Tenn. 1983) (citing State v. Poe, 614 S.W.2d 403, 404 (Tenn. Crim. App. 1981)).

Here, the trial court properly denied all forms of alternative sentencing and imposed a sentence of confinement after determining that the Defendant had a long history of criminal conduct and that measures less restrictive than confinement had frequently and recently been applied unsuccessfully to him. See T.C.A. § 40-35-103(1)(A), (C). The Defendant's presentence report reflects that he has a lengthy criminal history with numerous offenses occurring within a short time frame. The court acknowledged that many of the Defendant's offenses were "relatively minor traffic violations" but still "criminal behavior." Further, the Defendant has recently been convicted of several more serious misdemeanor offenses, namely aggravated criminal trespass, vandalism, and simple assault. Of particular concern to the trial court was the Defendant's inability to complete probation in relation to these offenses. While serving probation for his criminal trespass and vandalism convictions, the Defendant committed simple assault. He was again granted probation for the simple assault conviction, during which he committed the instant offenses. In that regard, the trial court noted that the Defendant's "potential for rehabilitation is poor. It appears to this Court that he reasonably would not abide by the terms of probation. . . . [H]e's had probation twice and he's not completed probation on either occasion." Additionally, the court considered the nature and circumstances of the offenses and found that the offenses were "very, very serious." The court reiterated that three victims "were all beaten, assaulted . . . [o]ne of which, Mr. Staggs, . . . was 70 years of age at the time" and concluded that "any type of probation would unduly depreciate the seriousness of these offenses." See T.C.A. § 40-35-103(1)(B).

Because the record shows that the trial court carefully considered the evidence, the enhancement and mitigating factors, and the purposes and principles of sentencing prior to imposing a sentence of confinement, the Defendant has failed "to either establish an abuse of discretion or otherwise overcome the presumption of reasonableness afforded" to the trial

court's sentence in this case." Caudle, 388 S.W.3d at 280. Accordingly, we uphold the Defendant's five-year sentence of confinement.

CONCLUSION

Based on the foregoing authority and analysis, we affirm the judgments of the trial court.

CAMILLE R. McMULLEN, JUDGE